Columbus Auto Parts Company *and* International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, and its Local Union No. 30. Case 9–CA–28447

February 24, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

Upon a charge filed by the Union on April 12, 1991, the General Counsel of the National Labor Relations Board issued a complaint on May 28, 1991,[1] against Columbus Auto Parts Company, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On September 9, the General Counsel filed a Motion for Summary Judgment. On September 12, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On September 25, the Respondent filed a response to the Notice to Show Cause and a motion for leave to file an answer. On October 11, the General Counsel filed a reply.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause be shown. The complaint states that unless an answer is filed within 14 days of service, ''all of the allegations in the complaint shall be deemed to be true and shall be so found by the Board.'' As evidenced by a receipt for certified mail, attached to the Motion for Summary Judgment, the complaint was served on the Respondent on May 31. Further, the undisputed allegations in the Motion for Summary Judgment disclose that counsel for the General Counsel notified the Respondent, by letter dated August 28 and admittedly received on September 3, that a Motion for Summary Judgment would be filed unless the Respondent filed an answer or requested additional time within which to file an answer by close of business on September 3.

In its response to the Notice to Show Cause, the Respondent, through its counsel, contends that its failure to file a timely answer was due to the unforeseen foreclosure on its assets by a secured creditor on June 14. The Respondent alleges that all records and documents essential to the filing of an answer were physically seized on that date. The Respondent further asserts that it did not receive the General Counsel's letter regarding its obligation to file an answer or request an extension of time to do so until September 3, the extended filing deadline date. The Respondent also contends that it was not served with the Motion for Summary Judgment.[2]

We find no merit in the Respondent's contentions. Even assuming that a creditor's action on June 14, the deadline date for filing an answer to the complaint, included the seizure of information needed to prepare an answer to the complaint, the Respondent offers no sufficient explanation for its failure to file an answer on or before that date, by stating that it lacked the knowledge necessary to answer the complaint's allegations, or to request an extension of time to file an answer.[3] In fact, notwithstanding receipt of the complaint and the August 28 letter, the Respondent made no attempt to communicate with the Board about this case until after receipt of the Board's Notice to Show Cause on September 23. Under these circumstances, we find that the Respondent has not shown good cause for its failure to file a timely answer, and we deny its motion to file an untimely answer.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, has been engaged in the manufacture of auto parts at a facility in Ann Arbor, Michigan. During the 12 months preceding issuance of the complaint, the Respondent sold and shipped from its Ann Arbor facility products, goods, and materials valued in excess of $50,000 directly to points outside of the State of Michigan. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act

[1] All dates are in 1991 unless otherwise indicated.

[2] The General Counsel's reply to the response of the Respondent notes that copies of the motion which were sent by certified mail to the Respondent and its counsel were not claimed. A respondent's failure to claim certified mail is not permitted to defeat the purposes of the Act. *Fletcher Oil Co*., 299 NLRB No. 77 fn. 2 (Aug. 23, 1990) (not reported in Board volumes).

[3] Our dissenting colleague's reliance on the seizure of the Respondent's assets on June 14 to excuse the Respondent's failure to file an answer is misplaced. The time for filing an answer expired on that date. Any answer sent by mail could have been timely filed only if it had been prepared and posted before the day in question. Thus, the seizure of assets could not have affected any timely preparation of such an answer. Moreover, the seizure could not have prevented the Respondent from requesting an extension of time for filing an answer.

and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all times material here, the Union has been the exclusive collective-bargaining representative, within the meaning of Section 9(a), of the employees in the following appropriate unit, which is appropriate for collective bargaining within the meaning of Section 9(b):

> All factory employees [who were employed by Respondent at its Columbus, Ohio facility], except employees in the tool and die departments and supervisors as defined in the Act.

The Respondent's recognition of the Union's exclusive bargaining representative status has been embodied in successive collective-bargaining agreements, the most recent of which was effective from May 29, 1985, to June 30, 1989. On July 25, 1989, the Respondent closed its facility at Columbus, Ohio. On November 12 and 20, 1990, and on February 28, 1991, the Union requested that Respondent bargain with it over outstanding grievances which the Respondent had delayed processing and which arose under the parties' most recent collective-bargaining agreement. Since November 12, 1990, and continuing to date, the Respondent has refused to bargain with the Union over the outstanding grievances.

It is well settled that the unilateral abandonment of a contractual grievance procedure after a contract expires violates Section 8(a)(5) of the Act. *Bethlehem Steel Co.*, 136 NLRB 1500 (1962), enfd. in pertinent part sub nom. *Shipbuilders (Bethlehem Steel) v. NLRB*, 320 F.2d 615 (3d Cir. 1963). We therefore find that by the above conduct the Respondent has refused to bargain with the Union in violation of Section 8(a)(5).

CONCLUSION OF LAW

By failing and refusing to bargain about grievances which arose under the parties' most recent collective-bargaining agreement, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist, and to take certain affirmative action designed to effectuate the policies of the Act.[4] We shall order the Respondent to bargain with the Union over all outstanding grievances which arose under the parties' most recent collective-bargaining agreement.

ORDER

The National Labor Relations Board orders that the Respondent, Columbus Auto Parts Company, Columbus, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain over grievances which arose under its most recent collective-bargaining agreement with the Union.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act

(a) On request of the Union, bargain over outstanding grievances which arose under the parties' most recent collective-bargaining agreement.

(b) Mail an exact copy of the attached notice marked ''Appendix''[5] to the Union and to all unit employees employed by the Respondent immediately prior to the July 25, 1989 closure of its Columbus, Ohio facility. Copies of the notice, on forms provided by the Regional Director for Region 9, shall upon receipt be signed by the Respondent's authorized representative and shall immediately thereafter be mailed as directed.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

MEMBER DEVANEY, dissenting.

Contrary to my colleagues, and under the unusual circumstances, I would not rule now on the General Counsel's Motion for Summary Judgment. Rather, I would grant the Respondent a 14-day period in which to file an answer to the complaint, during which period a ruling on the motion would be held in abeyance. The Respondent has, in my view, shown sufficient good cause for not yet having filed an answer to warrant a final opportunity to do so now. Specifically, as a result of the lawful seizure of the Respondent's assets by a secured creditor in June 1991, both the Respondent and its counsel in his own right have apparently until recently been physically precluded from obtaining or getting access to files and documents relevant to this case. In an affidavit submitted with the Respondent's

[4] In light of the Respondent's closure of the Columbus, Ohio facility where we would ordinarily order the posting of a notice to employees regarding unfair labor practices and remedies, we shall order the Respondent to mail signed copies of the notice to the Union and to all individuals employed in the bargaining unit on July 25, 1989, the date of closure. *Premier Cadillac*, 300 NLRB No. 168, slip op. at 6 (Dec. 31, 1990) (not reported in Board volumes).

[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

September 23, 1991 response to the Board's Notice to Show Cause why summary judgment should not be granted, the Respondent's counsel states that although he now has possession of his files that were seized along with the Respondent's assets and files, he has'' not as yet been able to obtain'' the Respondent's records and files directly relating to this case. Inasmuch as the Respondent's counsel has thus indicated that some measurable progress has been made in the Respondent's attempts to get possession of or access to its files and documents relevant to this case, and also inasmuch as it does not appear that the Charging Party or the General Counsel would be measurably prejudiced by an additional 14-day delay in this proceeding, I would grant such an additional period of time to the Respondent in which to file an answer to the complaint.[1]

[1] My colleagues characterize my approach here as an excusal of the Respondent's failure to file a timely answer to the complaint or at least to file a request for an extension of time. My focus is on the rather unique circumstances, discussed above, which surround the Respondent's failure to file a timely answer. I have not fixed on the Respondent's procedural failures to date as outcome-determinative events which, in this particular case, must lead inexorably to the grant of summary judgment at this time.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to mail and abide by this notice.

WE WILL NOT refuse to bargain over grievances which arose under the most recent collective-bargaining agreement with the International Union, United Automobile, Aerospace and Agricultural Workers of America, UAW, and its Local Union No. 30 for employees in the following appropriate unit:

> All factory employees [who were employed by Columbus Auto Parts Company at its Columbus, Ohio facility], except employees in the tool and die departments and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union, as the exclusive representative of all unit employees, over outstanding grievances which arose under the most recent collective-bargaining agreement with the Union.

COLUMBUS AUTO PARTS COMPANY